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Pamela S. Lott
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/057,182
Applicant(s) : TIMOTHY ALAN SCAVONE et al.
Filed : January 25, 2002
Title : ANTIPERSPIRANT COMPOSITIONS
CONTAINING PETROLATUM
TC/A.U. : 1617
Examiner : Shengjun Wang
Conf. No. : 5287
Docket No. : 8854

RESPONSE TO RESTRICTION AND/OR ELECTION REQUIREMENT

Mail Stop Non-Fee Amendment
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Restriction

In response to the Restriction Requirement requested in the Office Action of July 29, 2003, the applicants provisionally elect Claims 1-23, drawn to an antiperspirant composition, with traverse.

Respectfully, it is submitted that the restriction requirement in the present case is improper. The Examiner states that "the process claimed can be used to make a materially different product such as those known in the art as stated in the specification, page 1." Office Action page 2.

First, it is not clear what the Examiner means by "a materially different product such as those known in the art as stated in the specification." The burden is on the Examiner to provide an example of such use. MPEP 806.05(h). The Examiner is respectfully requested to point out specifically what products, in his opinion, the present specification lists as materially different products that can be made by the process as claimed.

Second, as far as the proprietary of the restriction requirement is concerned, the inquiry should focus on the composition as claimed in Claim 1 and on the method as

Appl. No. 10/057,182
Atty. Docket No. 8854
Amdt. dated January 25, 2002
Reply to Office Action of July 29, 2003
Customer No. 27752

claimed in Claim 24. MPEP 806.05(h). The Examiner is respectfully referred to Claim 1 that requires the antiperspirant composition comprising (a), (b), (c), and (d) elements; and to Claim 24 that claims a method comprising application of the composition of Claim 1. Thus, Claim 24 explicitly claims the use of the composition of Claim 1. The undersigned does not see how the method as claimed, i.e., the method of using the composition of Claim 1, can be used to make a product materially different from the composition of Claim 1. Again, the burden is on the Examiner to show how anyone, using the composition of Claim 1 can make a product materially different from the composition of Claim 1.

Furthermore, the examination of all the claims of the present application will not impose any additional burden on the Patent Office because both groups of claims, Claims 1-23, and Claims 24-26, are classified in the same class 424, and the same subclass 65+, as the Examiner acknowledges. Office Action page 2.

Summarizing, the method, as claimed in Claim 24, is directed to the use of the composition as claimed in claim 1. These are not two "independent" and "distinct" inventions, as required for the proper restriction requirement. 37 CFR 1.141, 142. It is also respectfully submitted that the Examiner failed to support his burden of showing that "the processes as claimed can be used to make a materially different product." In addition, the examination of both indicated groups of claims will not burden the Patent Office, because both groups belong in the same class and subclass, as the Examiner recognizes.

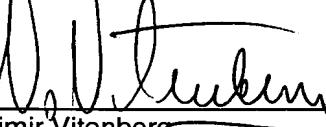
For the reasons stated above, the Examiner is respectfully requested to reconsider and withdraw the restriction requirement.

Species Election

In response to the Election of Species requirement, Applicants further elect species comprising the antiperspirant actives.

Respectfully submitted,

TIMOTHY ALAN SCAVONE *et al.*

By 
Vladimir Vitenberg
Attorney for Applicants
Registration No. 42,204
(513) 626-1932

August 29, 2003
Customer No. 27752



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IN THE UNITED STATES PATENT & TRADEMARK OFFICE
RESPONSE/AMENDMENT

Case Docket No. 8854

Mail Stop Non-Fee Amendment
COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Transmitted herewith is an AMENDMENT for the patent application:

Inventor(s): TIMOTHY ALAN SCAVONE et al. Confirmation No. 5287

Serial No.: 10/057,182 Group Art Unit: 1617

Date Filed: January 25, 2002 Examiner: Shengjun Wang

Title: ANTIPERSPIRANT COMPOSITIONS CONTAINING PETROLATUM

1. No additional fee is known to be required.
2. The fee has been calculated as shown below:

	(Col. 1) CLAIMS REMAINING AFTER AMENDMENT	(Col. 2) MINUS	(Col. 3) HIGHEST NO. PREVIOUSLY PAID FOR	PRESENT EXTRA*	OTHER THAN A SMALL ENTITY	
TOTAL	* 26	MINUS	** 26	= 0	x \$18 =	\$0.00
INDEP.	* 02	MINUS	*** 3	= 0	x \$84 =	\$0.00
FIRST PRESENTATION OF MULTIPLE DEP. CLAIM					+ \$280 =	\$0.00
					TOTAL	\$0.00

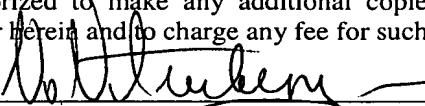
* If the entry in Col. 1 is less than the entry in Col. 2, write "0" in Col. 3.

** If the highest number of total claims previously paid for is less than 20, write "20" in this space.

*** If the highest number of independent claims previously paid for is less than 3, write "3" in this space.

The "Highest Number Previously Paid For" (Total or Independent) is the highest number found from the equivalent box in Col. 1 of a prior amendment or the number of claims originally filed.

3. The Commissioner is hereby petitioned under 37 CFR §1.136(a) to grant any extension of time needed for timely response to the Office Action dated in the above-identified application to preserve pendency of said application. The processing fee under 37 CFR §1.17 has been determined as follows: \$ for a -month extension of time.
4. The Commissioner is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 16-2480. A duplicate copy of this sheet is attached.
 - a. Any patent application processing fees under 37 CFR §1.16.
 - b. Any patent application processing fees under 37 CFR §1.17.
5. The Commissioner is hereby authorized to make any additional copies of this sheet needed to accomplish the purposes provided for herein and to charge any fee for such copies to Deposit Account No. 16-2480.


Vladimir Vitenberg
Attorney for Applicants
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Date: August 29, 2003

Customer No. 27752

(last revised 4/7/2003)